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SENATE BILL 390

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO CRIMINAL PROCEDURE; ESTABLISHING PROCEDURES FOR  
POST-CONVICTION CONSIDERATION OF DNA EVIDENCE; ENACTING A NEW  
SECTION OF THE CRIMINAL PROCEDURE ACT; REPEALING A SECTION OF  
THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Criminal Procedure Act  
is enacted to read:

" [NEW MATERIAL] PROCEDURES FOR POST-CONVICTION  
CONSIDERATION OF DNA EVIDENCE-- REQUIREMENTS. --

A. A person convicted of a criminal offense, who  
claims that DNA evidence will establish his innocence, may  
petition the district court of the judicial district in which  
he was convicted to order the disclosure, preservation,  
production and testing of evidence that can be subjected to DNA

1 testing. A copy of the petition shall be served on the  
2 district attorney for the judicial district in which the  
3 district court is located.

4 B. As a condition to the district court's  
5 acceptance of his petition, the petitioner shall:

6 (1) submit to DNA testing ordered by the  
7 district court; and

8 (2) authorize the district attorney's use of  
9 the DNA test results to investigate all aspects of the case  
10 that the petitioner is seeking to reopen.

11 C. The petitioner shall make a reasonable showing  
12 that:

13 (1) he was convicted of a criminal offense;

14 (2) evidence exists that can be subjected to  
15 DNA testing;

16 (3) the evidence to be subjected to DNA  
17 testing:

18 (a) has not previously been subjected to  
19 DNA testing;

20 (b) has not previously been subjected to  
21 the type of DNA testing that is now being requested; or

22 (c) was previously subjected to DNA  
23 testing, but was tested incorrectly or interpreted incorrectly;

24 (4) the DNA testing he is requesting will be  
25 likely to produce admissible evidence; and

underscored material = new  
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1 (5) if the DNA testing he is requesting had  
2 been performed prior to his conviction and the results had been  
3 exculpatory, there is a reasonable probability that the  
4 petitioner would not have pled guilty or been found guilty.

5 D. If the petitioner satisfies the requirements set  
6 forth in Subsection C of this section, the district court shall  
7 appoint counsel for the petitioner, unless the petitioner  
8 waives counsel or retains his own counsel.

9 E. The district court shall order all evidence  
10 secured that is related to the petitioner's case and that could  
11 be subjected to DNA testing. The evidence shall be preserved  
12 during the pendency of the proceeding. The district court may  
13 impose appropriate sanctions, including dismissal of the  
14 petitioner's conviction or criminal contempt, if the court  
15 determines that evidence was intentionally destroyed after  
16 issuance of the court's order to secure evidence.

17 F. The district court shall order DNA testing if  
18 the petitioner satisfies the requirements set forth in  
19 Subsections B and C of this section.

20 G. If the results of the DNA testing are  
21 exculpatory, the district court shall order appropriate relief  
22 for the petitioner. The district court may set aside the  
23 petitioner's judgment and sentence, may dismiss the charges  
24 against the petitioner with prejudice, may grant the petitioner  
25 a new trial or may order other appropriate relief.

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1           H. The cost of DNA testing ordered pursuant to this  
2 section shall be borne by the state or the petitioner, as the  
3 district court may order in the interest of justice. Provided,  
4 that a petitioner shall not be denied DNA testing because of  
5 his inability to pay for the cost of DNA testing.

6           I. The provisions of this section shall not be  
7 interpreted to limit:

8                   (1) other circumstances under which a person  
9 may obtain DNA testing; or

10                   (2) post-conviction relief a petitioner may  
11 seek pursuant to other provisions of law.

12           J. The petitioner shall have the right to appeal a  
13 district court's denial of the requested DNA testing, a  
14 district court's final order on a petition or a district  
15 court's decision regarding relief for the petitioner. The  
16 state shall have the right to appeal any final order issued by  
17 the district court. An appeal shall be filed by a party within  
18 thirty days to the court of appeals.

19           K. The state shall preserve all evidence that is  
20 secured in relation to an investigation or prosecution of a  
21 crime and that could be subjected to DNA testing, for not less  
22 than the period of time that a person remains subject to  
23 incarceration or supervision in connection with the  
24 investigation or prosecution.

25           L. The state may dispose of evidence before the

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1 expiration of the time period set forth in Subsection K of this  
2 section if:

3 (1) no other law, regulation or court order  
4 requires that the evidence be preserved;

5 (2) the evidence must be returned to its  
6 rightful owner;

7 (3) preservation of the evidence is  
8 impractical due to the size, bulk or physical characteristics  
9 of the evidence; and

10 (4) the state takes reasonable measures to  
11 remove and preserve portions of the evidence sufficient to  
12 permit future DNA testing.

13 M As used in this section, "DNA" means  
14 deoxyribonucleic acid. "

15 Section 2. REPEAL. --Section 31-1A-1 NMSA 1978 (being Laws  
16 2001, Chapter 29, Section 1) is repealed.

17 Section 3. EFFECTIVE DATE. --The effective date of the  
18 provisions of this act is July 1, 2003.